

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Physician Specialty Pharmacy, LLC,

Plaintiff,

v.

ORDER

Civil No. 18-1044 (MJD/TNL)

Prime Therapeutics, LLC,

Defendant.

Adrienne Dresevic and Robert J Dindoffer, The Health Law Partners and Elizabeth R. Odette and Kristen G. Marttila, Lockridge Grindal Nauen PLLP, Counsel for Plaintiff.

Christine Lindblad, Meghan M.A. Hansen, Ellie J. Barragry and Alex L. Rubenstein, Fox Rothschild LLP, Richard J. Malacko, Malacko Law Office, Counsel for Defendant.

I. Introduction

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Tony Leung dated January 23, 2019. Both Plaintiff and Defendant have filed objections to the Report and Recommendation.

II. Discussion

A. Background

Plaintiff Physician Specialty Pharmacy, LLC (“PSP”) is a specialty pharmacy located in Florida that has a substantial number of customers in Alabama. Defendant Prime Therapeutics, LLC (“Prime”) is a pharmacy benefits manager that manages the prescription drug benefits for Blue Cross and Blue Shield of Alabama. For several years, PSP filled prescription claims for Prime’s beneficiaries, but in 2015, Prime began to conduct a series of audits concerning PSP’s claims to Prime for payment. While the audits were conducted, Prime refused to pay PSP for any prescriptions it dispensed to a Prime member.

In April 2016, Prime rejected over \$300,000 worth of claims submitted by PSP for a number of reasons. Before PSP could appeal the results of the first audit, and before the other audits were complete, Prime terminated PSP from its pharmacy network. Later, Prime completed the remaining audits and rejected another \$500,000 worth of claims.

In April 2017, Prime announced the creation of AllianceRx; a joint venture with Walgreens to provide specialty and mail-order pharmacy services.

In April 2018, PSP brought this claim against Prime, asserting a number of Minnesota and Florida state law claims, as well an antitrust claim under federal law. Prime has moved to dismiss the amended complaint, and PSP has moved, *in limine*, to exclude a settlement demand letter pursuant to Fed. R. Evid. 408.

B. Report and Recommendation

Following briefing and oral argument, the Magistrate Judge issued a Report and Recommendation recommending the Court grant the motion to dismiss the antitrust claim and to decline to exercise supplemental jurisdiction over the remaining state law claims. The Magistrate Judge further recommended that the Court allow PSP the opportunity to submit an amended complaint. Both parties have filed objections to portions of the Report and Recommendation.

C. Objections

PSP objects to the Magistrate Judge's conclusion that its claims under Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act be dismissed without prejudice for failure to plausibly plead claims thereunder and to the recommendation that this Court not exercise supplemental jurisdiction over the state law claims.

Prime objects to the Magistrate Judge's recommendation that PSP be allowed the opportunity to file an amended complaint. PSP has since filed a motion for leave to file an amended complaint, and that matter will be heard by the Magistrate Judge.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court agrees with the Report and Recommendation that PSP has failed to plausibly plead antitrust claims under federal law and that PSP should be allowed the opportunity to file an amended complaint. At this time, the Court will decline to address whether to exercise supplemental jurisdiction over the state law claims.

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss Plaintiff's Amended Complaint (Doc. No. 18) is **GRANTED** as to Count XVI – Antitrust Violations. The Court will defer ruling on the issue of supplemental jurisdiction over the remaining state law claims until such time as the motion for leave to file an amended complaint has been decided.

Dated: March 28, 2019

s/ Michael J. Davis
MICHAEL J. DAVIS
United States District Court